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ABSTRACT

This booklet describes Great Britain's Education Act of 1996, Part 4, which is related to the education of pupils with learning difficulties. Issues discussed are the main aspects of Part 4, the duty of local education agencies to include children with special needs in the mainstream, what parents should expect from their child's schools, what parents should expect from their local education agencies, and the Code of Practice regulations relating to children with disabilities. Five stages of help recommended by the Code that schools and LEAs should provide for children with special education needs are described and include identification, coordinating and development of an individual education plan, the inclusion of outside specialists to advise, consideration of a need for statutory assessment and a multi-disciplinary assessment, and the consideration of a need for a Special Education Needs (SEN) statement and review of provision of services. The special education process is explained and parent rights and responsibilities are highlighted. The booklet closes with a list of resource organizations, government departments, and publications. (CR)

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Assessments Statements

CSIE summary of Part 4 of the Education Act 1996 > > > > >

updated January 1999

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PART 4, EDUCATION ACT 1996 SPECIAL EDUCATIONAL NEEDS

The 1996 Education Act (Part 4) relates to the education of pupils with learning difficulties. This CSIE summary covers the assessment and statement procedures. The main aspects of Part 4 are:

- a Code of Practice giving detailed practical guidance to schools and LEAs on how to identify, assess, record, meet, and review special educational needs – both with and without statutory statementing procedures;
- a normal limit of 26 weeks to complete the legal process for identifying and assessing special needs and, where appropriate, issuing a legally-binding statement on how those needs will be met;
- parents of children with statements are able to say which maintained school they prefer their child to attend and the LEA must agree – subject to certain conditions;
- the maintained school named on a child's statement of special educational needs must accept that child;
- LEAs have to carry out specific procedures when reviewing statements;
- an extension of parents' rights of appeal against LEA decisions on assessments and statements, to an independent Special Educational Needs (SEN) Tribunal to hear those appeals;
- duties on schools to draw up, publish, and report on their Special Educational Needs (SEN) Policy.

LEAs have the duty to identify, assess and provide for children requiring statements of special educational needs – including those attending grant-maintained schools (or foundation schools from September 1999). This duty covers children from the age of two – and before that if a child is identified by his or her parents, the child health services or social services as having special needs.

However, schools' own responsibilities for special needs are strengthened – and parents are given a bigger say in the statutory procedures, with stronger rights of appeal if they disagree with LEA decisions.

The duty to include in the mainstream

LEAs have a duty to include a child with special needs in an ordinary school, so long as:

- the child's needs are properly met;
- other children's education is not adversely affected;
- resources are being used efficiently;
- parents are in agreement.

However, an LEA may include a child – even when parents want a special school – if the special school is not appropriate. In this situation parents can appeal to the Tribunal. Parents can also name the school they want their child to go to when the statement is first issued, and then on an annual basis. If the LEA does not agree, parents can appeal (see *Change of school*, page 7).

What parents should expect from their child's school

A school must:

- provide the name of the teacher responsible for children with special educational needs (usually called the SEN co-ordinator);
- explain its arrangements for deciding which children need help and how it will be given;
- describe how it will work closely with parents.

What parents should expect from their LEA

An LEA must:

- make assessments and statements within the proper time limits (see pages 4–7);
- write clear and thorough statements which set out a child's educational and other needs, the objectives to be achieved, the provision to be made, and the arrangements for monitoring and review;
- ensure there is an annual review of the provision made and that educational targets are monitored and updated.

This leaflet provides a brief introduction to the Code of Practice followed by a step-by-step guide to the procedures for assessing and making a statement for a child with special educational needs under Part 4 of the 1996 Act.

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It outlines the roles of parents and children in these procedures and explains, in brief, how to appeal against any decision or aspect of the procedures with which they disagree.

THE CODE OF PRACTICE

Schools and LEAs have to have regard to the **Code of Practice** to plan how they will meet children's special needs. A child's needs must be met throughout her or his school career. Most children with special needs will be educated in ordinary schools without a statutory assessment or statement, and with outside specialist help if necessary. The Code recommends a staged approach to special educational needs, based on a recognition that there are various levels of need requiring different forms of provision. Such needs may exist before a child goes to school – in which case the LEA, along with health services, should become involved at this early stage, having regard to the Code.

The Code emphasises that children with special educational needs, including those with statements, should usually:

- be educated alongside other children in ordinary schools – 'where appropriate and taking into account the wishes of their parents';
- have the greatest possible access to a broad and balanced education which includes the National Curriculum.

In addition, parents' knowledge, views and experience are seen as vital and the tasks of assessing and meeting needs will be most successful when:

- there is 'the greatest possible degree of partnership' between parents, their children, the school, the LEA, and any other agencies involved;
- those responsible take into account a child's wishes in the light of his or her age and understanding;
- there is close co-operation between all the agencies concerned and a multi-disciplinary approach to resolving issues.

Five stages of help

The Code recommends that schools and LEAs should provide help for children with special educational needs in stages. It suggests five stages – but does not insist on schools following this particular pattern, so long as a school's own scheme recognises the various levels of need, the different responsibilities for assessing and meeting those needs, and the numerous types of provision available. Parents are entitled, and expected, to be fully involved and consulted at all stages.

The first three stages of assessing and meeting special educational needs are school-based; the final two stages involve *statutory requirements* with responsibility shared between school and LEA and begin on page 4 of this leaflet.

stage	*what kind of help?*	*who organises?*
1	Class teacher or form/year tutor identifies a child's special school educational need, gathers information, consults with SEN co-ordinator, and takes early action.	school
2	SEN co-ordinator takes responsibility for co-ordinating special educational provision, and ensures that an individual education plan is drawn up, working with a child's teachers.	school
3	SEN co-ordinator brings in outside specialists to advise.	school
4	LEA considers need for statutory assessment and, if appropriate, makes a multi-disciplinary assessment.	school & LEA
5	LEA considers need for SEN statement and, if appropriate, makes a statement and arranges, monitors and reviews provision.	school & LEA

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PROCEDURES FOR ASSESSMENTS AND STATEMENTS UNDER THE 1996 ACT

PROPOSING AN ASSESSMENT > > > > > > DECIDING TO ASSESS

School, health services or social services department considers that a child ought to be assessed – and informs LEA.

LEA proposes to carry out a statutory assessment of a child and writes to the parents:

- explaining the procedures to be followed;
- providing the name of an LEA officer who can give more information (a 'named officer');
- describing the role of the 'named person' *(see below)*;
- explaining parents' right to agree or disagree with the proposal and to send in written evidence;
- listing where to get independent advice and support.

LEA also tells:

- the child's headteacher
- the local social services department
- the district health authority.

Or

Parents request LEA to assess their child's special educational needs. LEA must take the request seriously and act immediately. (LEA can say no only if the child has been formally assessed in the previous six months or, having looked at all the evidence, it considers an assessment is 'unnecessary'.)

Parents have at least 29 days in which to tell the LEA what they think of its proposal, to make representations, submit evidence, and name people they want the LEA to consult. The limit of 29 days is waived if the parents request an assessment.

The Code says that the LEA should tell parents about the role of the named person, who can advise, support and attend meetings with them throughout the whole process of assessment and making a statement. This must be someone whom parents can trust, and could be a professional, someone from a voluntary organisation or parents' support group, a friend or relative. LEA and parents should agree on the named person.

The LEA has six weeks in which to decide whether to go ahead with the assessment.

Within six weeks, LEA decides to go ahead with the assessment; tells parents by letter of decision and reasons for it.

Or

LEA decides *not* to go ahead; tells parents by letter.

Can I complain or appeal?

If LEA:

- *delays a decision beyond six weeks, you can get the named officer to sort things out; and if the matter is still not resolved, you can complain directly to the Secretary of State for Education and Employment.*
- *decides not to carry out an assessment at all, you can appeal to the SEN Tribunal which can support the LEA or order it to make an assessment. You must appeal within two months of the LEA's decision not to go ahead.*

ASSESSMENT BEGINS > > > > > > >

LEA has 10 weeks in which to carry out the assessment.

LEA consults parents, headteacher and teachers, plus medical, psychological and social services staff, and anyone else who knows the child well and can give useful advice.

The Code says that the LEA should also find out and take account of what the child thinks about her or his special needs and about what help is needed.

Parents have the right to attend any or all of the examinations (*eg* interviews, tests, medical and other assessments) held for the purposes of the assessment. They can also submit any information they wish about their child, including independent assessments. The LEA must copy all such information and give it to all those professionals who see the child.

The time limits by which the different stages of assessment and statementing should be completed may be extended in certain

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specified circumstances, for example, when parents are away from the area for lengthy periods, the child does not keep an appointment for an examination or test, or parents want more time to provide advice for the assessment or to comment on the draft statement.

> > ASSESSMENT COMPLETED > > > > > > ^

LEA decides within 10 weeks whether or not to issue a statement – and has two weeks in which to send parents full details of its decision.

The main reason for making a statement is when all the special educational provision required to meet a child's needs cannot reasonably be provided by local ordinary schools within the resources they normally have.

If yes to statement

LEA sends parents copy of proposed statement, together with copies of all the reports and advice which LEA used to reach its decision about the type of provision recommended in the statement for meeting the child's special needs. The statement should be clear, concise, and easily understood, with all technical terms and jargon fully explained.

If no to statement

LEA tells parents by letter of decision and why – and of their right of appeal. The Code says that the LEA should also consider issuing a 'note in lieu of a statement' setting out the reasons for its decision, the supporting evidence, and all the advice received during the assessment.

Can I appeal?

You can appeal to the SEN Tribunal, which can support the LEA, order it to make a statement, or tell it to think again. You must appeal within two months of the LEA's decision not to issue a statement.

The proposed statement will not refer to a type of school nor to a particular school. LEA must send parents details of all suitable schools with the proposed statement.

^ PROPOSED STATEMENT ARRIVES > > > > >

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Parents have 15 days in which to:

- tell LEA what they think of the proposed statement;
- meet and discuss matters with LEA officers (including the named officer) and any professional who gave advice in compiling the statement;
- express a preference for the school they want their child to attend.

Parents can ask for any number of further meetings with LEA within 15 days of any previous meeting – and then have another 15 days after the final meeting to send LEA any more comments.

The Code says that every effort should be made to ensure that, so far as possible, the child's views are reflected in the proposed statement and that the child understands the reasons for the proposals.

Parents can visit any school which they are thinking of naming as the school of their choice.

LEA should normally make the final statement within eight weeks of making the proposed statement.

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> > FINAL STATEMENT ARRIVES > > > > > >

LEA confirms or amends proposed statement and issues final statement to parents. Final statement includes name of school given by the parents – unless LEA considers that the school cannot properly meet the child's needs, other children's education is adversely affected, or resources are not being used efficiently.

LEA must also tell parents of their right of appeal to the SEN Tribunal if they disagree with the statement and/or the school named in it.

Either

Parents agree with final statement. LEA and school begin to introduce provision required by statement.

or

Parents disagree with final statement; discuss matters with named officer; if unable to reach agreement, decide to appeal to the SEN Tribunal.

The final statement must contain:

- the child's family details;
- the child's special educational needs;
- the provision to meet those needs and the objectives to be achieved;
- the arrangements for monitoring progress;
- all non-educational needs with details of the provision to meet them.

Short-term educational targets should be set by a child's school within two months of the child arriving at the school. (These targets would not be part of the statement.)

The final statement including reports, may not be disclosed without parents' consent, except in specific circumstances.

> > APPEALING > > > > > > > > > > > > >

If parents are not satisfied that a school has taken proper account of the Code of Practice in the first three stages of assessing and meeting a child's special educational needs, they should first take the matter up with the school and then, if still unhappy, with the LEA (in the case of an LEA-maintained school). If they remain dissatisfied, they can make a formal complaint to the Secretary of State under Section 497 of the 1996 Education Act.

Parents can appeal to the independent Special Educational Needs (SEN) Tribunal against the statement when it is first issued, when it is amended and if the LEA refuses to amend after a reassessment. Appeals can be against:

- the description of their child's learning difficulties;
- the help to be given for their child's needs;
- the type and name of the school listed by the LEA;
- the statement not naming the school.

Parents can also appeal to the SEN Tribunal if the LEA:

- refuses to carry out an assessment;
- refuses to make a statement;
- decides to stop maintaining a statement;
- refuses to re-assess a child following a parent's request if an assessment has not been made for six months;
- refuses to change the name of the school in an existing statement if a request to do so has not been made for 12 months.

Parents must apply to the Tribunal within two months of receiving the LEA's decision.

When hearing an appeal, the SEN Tribunal asks: has the LEA taken proper account of the Code and reached the right decision in the particular circumstances set out in the Act? The Tribunal can support the LEA, tell it to think again, or order it to carry out parents' wishes.

If Tribunal turns down the appeal, there is no further right of appeal to Secretary of State except on a point of law.

LEA should tell parents about organisations which can help with appeals, and free services.

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> > REVIEWING THE STATEMENT

LEA must review a child's statement at least every 12 months. This requires a report from the school and a review meeting, organised by the headteacher, involving parents, teachers, someone from the LEA and, where relevant, health and social services professionals, and the careers service. Parents must be invited to the meeting and have advance copies of all reports made on their child and be invited to make contributions and comments on reports.

A review meeting scrutinising the statement for its suitability for the child sets new targets for a child and sends a report to LEA, which decides whether to propose changes to the statement.

LEA organises the first review meeting after a child becomes 14, at which a transition plan is drawn up to help the child's move into adult life.

V AMENDING THE STATEMENT > > > > >

The annual review may result in LEA proposing changes to the statement and even a change of school. LEA tells parents by letter of proposed changes. Parents have 15 days in which to tell LEA what they think of the changes. LEA must make final decision within eight weeks of proposing the changes.

Parents have a right of appeal to the SEN Tribunal if they disagree with changes made.

Change of school

At any time, parents can request a change of school named in the statement. LEA is under a duty to agree provided that the request is made more than 12 months after:

- a similar request;
- the issue of a final copy of the statement;
- the issue of an amended statement;
- or the end of an appeal to the Tribunal over the provision specified in the statement;

and provided:

- the child's needs can be properly met;
- other children's education is not adversely affected;
- and resources are used efficiently.

If the LEA does refuse, parents can appeal to the SEN Tribunal.

^ LEAVING SCHOOL

On leaving school between 16 and 19, a young person's statement may lapse. Instead, the transition plan should set out agreed arrangements for meeting a young person's special needs in further or higher education, or in social services provision. Although a transition plan does not have the legal force of a statement, all young people are legally entitled to have access to free, full-time education up to the age of 19.

LEAs should, with the involvement and agreement of young person and parents, pass on information which provides an accurate and positive picture – *eg* the transition plan, last annual review, records of achievement – to the social services department, the college to be attended, and, when necessary, the Further Education Funding Council (FEFC).

Under the Further and Higher Education Act 1992, the FEFC must 'have regard to' the further education needs of students who have learning difficulties and/or disabilities. This mainly entails making sure that there are sufficient further education opportunities for such students. It may extend to funding places in a specialist college if a student's needs cannot be met by his or her local college (see the FEFC booklet explaining options for students, *Further Education for Young People with Learning Difficulties or Disabilities*: see also FEFC Circular 94/03 *Students with Learning Difficulties and/or Disabilities*).

The FEFC is responsible primarily for academic and vocational courses. Other types of college course, and school provision up to the age of 19, are the LEA's responsibility. These options should be considered in drawing up a young person's transition plan.

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WHERE TO FIND OUT MORE

Your local education authority (LEA) and, in the case of children under five, social services department should be your first source of advice and help – look them up in the local phone book.

Organisations

The following national organisations can also provide information and advice, or pass you on to someone who can.

Centre for Studies on Inclusive Education (CSIE)
1 Redland Close, Elm Lane, Redland,
Bristol BS6 6UE; phone 0117 923 8450.
Publishes large number of free and inexpensive leaflets and reports on inclusive education to help parents and professionals; free advice service; organises conferences and supports parents' groups, students, schools and LEAs.

Advisory Centre for Education (ACE)
1b Aberdeen Studios, 22-24 Highbury Grove,
London N5 2DQ; phone 0171 354 8321.
Offers free advice to parents and others on all aspects of state education; publishes guides to the law on education and on many other aspects of schooling, including bi-monthly ACE Bulletin. *See* ACE Special Education Handbook.

Children's Legal Centre
University of Essex, Wivenhoe Park, Colchester,
Essex CO4 3SQ; phone 01206 873820.
Runs free advice service (2 to 5pm Mon–Fri; 10am–12noon Mon / Wed / Fri; 5–7pm Tues / Thurs) on all aspects of law and policy affecting children and young people in the UK, including special education; publishes wide range of guides including monthly Childright *magazine.*

Council for Disabled Children
8 Wakley Street, London EC1V 7QE;
phone 0171 843 6061.
Offers free information service; issues publications on special educational needs and listings of organisations concerned with specific disabilities or learning difficulties.

Network 81
1–7 Woodfield Terrace, Stansted,
Essex CM24 8AJ; phone 01279 647415.
National network of parents' groups supporting families with children with disabilities or learning difficulties offering advice and information by phone and links with other groups and individuals; issues publications and organises conferences and training days.

Independent Panel for Special Education Advice (IPSEA)
4 Ancient House Mews, Woodbridge, Suffolk
IP12 1DH; phone 01394 382814.
Offers advice on LEAs' duties towards children and young people with special educational needs; second professional opinions on those needs, and publishes a parents' newsletter.

Government Departments

These Departments answer queries about and issue publications explaining the law on special educational needs.

Department for Education and Employment (DfEE)
Sanctuary Buildings, Great Smith Street,
London SW1P 3BT; phone 0171 925 5000.

Department of Health
Wellington House, 133–155 Waterloo Road,
London SE1 8UG; phone 0171 972 4127/2000.

Welsh Office
Cathays Park, Cardiff CF1 3NQ;
phone 01222 825111.

For information on access to further education, first contact your local FE college, and also:

Further Education Funding Council (FEFC)
Cheylesmore House, Quinton Road,
Coventry CV1 2WT; phone 01203 863000.

SKILL National Bureau for Students with Disabilities
336 Brixton Road, London SW9 8RR;
phone 0800 3285050 (1.30pm – 4.30pm weekdays).

Publications

The following Department for Education and Employment publications are available free by phoning the DFE on 0845 6022260:

- **Code of Practice on the Identification and Assessment of Special Educational Needs**
- **Special Educational Needs: a guide for parents**
- **Special Educational Needs Tribunal: How to Appeal**

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